

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	Case No. 99-40111
ERIC W. DUFFIN and MELANIE)	
DUFFIN,)	MEMORANDUM OF DECISION
)	RE WELLS FARGO'S MOTION
DEBTORS.)	FOR RELIEF FROM STAY
_____)	

Murray Jim Sorensen, BLASER, SORENSEN & HANSEN,
Blackfoot, Idaho, for Debtors.

R. Wayne Sweeney, LUKINS & ANNIS, Coeur d'Alene, Idaho, for
Wells Fargo Bank, N.A.

Thomas W. Clark, MERRILL & MERRILL, Pocatello, Idaho, for
Simplot Soilbuilders.

Craig W. Christensen, Pocatello, Idaho, for Ireland Bank.

Karl Decker, MEACHAM & DECKER, Idaho Falls, Idaho, for
Siddoway, Inc.

Daniel R. Acevedo, ACEVEDO & SIMPSON, Blackfoot, Idaho, for
USA Fertilizer.

Background.

Chapter 11 debtors Eric and Melanie Duffin own a farming
operation in Bingham County, near Aberdeen, Idaho. Debtor Eric Duffin
("Duffin") has farmed for approximately seventeen years.

Debtors have periodically borrowed funds with which to acquire equipment and operate. Debtors began their credit relationship with First Interstate Bank in about 1987. Duffin generally did not read loan documents before signing them, but instead relied upon the bank's loan officers to correctly document the parties' agreements and to answer any questions he had concerning the documents.

In 1996, First Interstate was acquired by Wells Fargo Bank. At that time, Wells Fargo sent Debtors certain written information concerning its agricultural lending services. Debtors continued their borrowing, now from Wells Fargo, and over the years executed several promissory notes and security agreements with Wells Fargo to acquire funds to purchase equipment and to operate their farm. Debtors raised wheat in 1996 and 1997; sugar beets in 1996, 1997, and 1998; and potatoes in 1997 and 1998. All crops were raised on land located in Bingham County, Idaho.

On June 26, 1996, in connection with a loan transaction, First Interstate had caused a UCC-1 financing statement to be filed with the office of the Idaho Secretary of State, listing First Interstate as the secured party. The financing statement described the security for its loan as "all crops" and was signed by representatives of First Interstate and by Mr. Duffin. The financing

statement did not list Duffin's social security number or tax identification number.

The financing statement refers to a real estate description upon which "some or all of the collateral is located", but no description is included in the space provided. Exhibit "H": UCC-1 Financing Statement filed June 26, 1996 at p. 1.

On that same date, a UCC-1F was filed with the Secretary of State listing Wells Fargo as the secured party. The UCC-1F described the security as Debtors' wheat crop. Duffin signed this document. The number listed as Mr. Duffin's social security or tax identification number was incorrect. The financing statement lists the county code number for Bingham County, and indicates that it covers what the Court understands is a reference to 300 acres. Exhibit "E": UCC-1F Financing Statement filed June 26, 1996.

On March 25, 1997, Debtors executed a security agreement in favor of Wells Fargo. The security agreement granted Wells Fargo a security interest in all of Debtors' farm equipment, and all their existing and future crops to secure all existing and future indebtedness owed by Debtors to Wells Fargo. The security agreement contained a clause providing that "Grantor hereby appoints Lender as its irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect or to continue the security interest granted in this Agreement." Exhibit C: Agricultural Security Agreement at p. 2.

On April 17, 1997, Wells Fargo filed a UCC-1 with the Secretary of State that described the bank's security as including all "crops." This financing statement was not signed by Duffin, but was instead signed by a Wells Fargo employee under the authority granted by the "attorney-in-fact" clause in the security agreement. This financing statement contains an attachment describing several parcels of real property in Idaho by section, township and range, but not by county. This document did not contain Debtor's social security number or tax identification number. Exhibit "G": UCC-1 Financing Statement filed April 17, 1997 at pg. 1-2.

On November 7, 1997, Wells Fargo filed another UCC-1 financing statement with the Secretary of State. This financing statement lists, among other items, "crops" as security, does not list Debtor's social security or tax identification number, and was signed by a Wells Fargo employee as attorney-in-fact for the Debtor. It contains no real estate description. Exhibit F: UCC-1 filed on November 7, 1997 at p. 1.¹

Debtors and Wells Fargo executed an operating credit agreement on April 9, 1998, extending \$541,000 in credit to Debtor. See Exhibit B: Confirmation Letter. Debtors raised potatoes in 1998, sold the crop, and

¹ Wells Fargo also filed a UCC-1 on November 10, 1997, covering listed leased items of farm equipment only.

currently hold approximately \$350,000 in potato sale proceeds. Debtors owe Wells Fargo approximately \$550,000.

Debtors filed a Chapter 11 bankruptcy petition on January 25, 1999. On March 26, 1999, Wells Fargo filed its Motion for Relief from Stay, seeking access to the security for its debts, which it contends includes the \$350,000 from Debtors' 1998 potato crop. Debtors objected to the motion arguing that they need the equipment and cash to operate. Debtors intend to propose a reorganization plan and to continue in business. They offer to provide Wells Fargo adequate protection of its interest in Debtors' equipment. See 11 U.S.C. § 361; § 362(d)(1). However, Debtors dispute the validity of Wells Fargo's interest in the 1998 potato crop proceeds.

Debtors argue that because neither First Interstate nor Wells Fargo filed a UCC-1F financing statement covering Debtors' potato crop, but instead relied on the three UCC-1's that were filed covering "all crops," and a single UCC-1F covering only wheat, that Wells Fargo's security interest in the potato crop money is unperfected as against a hypothetical lien creditor and avoidable by Debtors as Chapter 11 debtors-in-possession. See 11 U.S.C. § 1107(a), § 544(a). Even assuming Wells Fargo was not required to file a UCC-1F specifically describing potatoes, Debtors contend that the bank's UCC-1

filings are substantially defective and seriously misleading in that they do not contain a description of the land upon which the potato crop was grown, were not signed by Debtor, and because the statements do not contain their correct social security or tax identification numbers.

The Court conducted an evidentiary hearing concerning Wells Fargo's motion on June 2, 1999, after which the Court took the issues under advisement. The parties have filed written briefs concerning the issues. This Memorandum constitutes the Court's findings of fact and conclusions of law. F.R.B.P. 7052.

Discussion and Disposition of the Issues.

The Court may grant relief from the automatic stay to a secured creditor "for cause, including the lack of adequate protection", or if the debtor has no equity in the property, and the property is not necessary for an effective reorganization. 11 U.S.C. § 362(d)(1) and (2). Here, Wells Fargo does not seriously contest Debtors' position that the cash and equipment are necessary for their reorganization efforts. The issue is therefore whether Wells Fargo's interest is adequately protected.

Debtors contend that Wells Fargo has no enforceable interest in the potato proceeds that they should be required to protect. While the likelihood that a secured creditor's security interest may be avoidable does not always bar the creditor from obtaining relief under Section 362(d), *In re Roberts*, 88 I.B.C.R. 258, 259, whether the creditor's security interest has been properly perfected is an important factor in determining whether relief from stay is appropriate. *In re Hunt's Pier Associates*, 143 B.R. 36, 50 (Bankr. E.D. Pa. 1992). It is therefore important that the Court scrutinize Wells Fargo's asserted security interest in the 1998 potato crop proceeds.

The requirements for creation and perfection of a security interest in crops are found in Idaho's version of the Uniform Commercial Code, Idaho Code § 28-9-101 *et seq.* A security agreement does not attach until: (1) the debtor has signed a written security agreement, and if the agreement covers crops, it contains a description of the land on which the crops are to be grown; (2) value has been given by the creditor to the debtor; and (3) the debtor has rights in the proposed collateral. Idaho Code §28-9-203(1)(a)-(c). The Court concludes that Wells Fargo's security agreements in this case comply with the requirements of Idaho Code § 28-9-203(1) for creation of a security interest so that Wells Fargo holds a security interest in the crop proceeds.

The March, 1997 security agreement describes the collateral for Wells Fargo's current and future loans to Debtors as "[a]ll crops and crop products, whether stored, planted, growing or to be grown by Grantor or to be acquired from third parties, including crops hereafter grown, owned or acquired" Exhibit C: Agricultural Security Agreement at p. 1. **The security agreement also contains a description of the land on which the potato crop was grown in 1998.**² These provisions are adequate to grant Wells Fargo an enforceable security interest in Debtors' crops, including their 1998 potato crop. *Kelley Bean Company Inc. v. Victor*, 834 P.2d 912, 914 (Ct. App. 1992) (a description is sufficient whether or not it is specific if it reasonably identifies what is described); Idaho Code 28-9-110. The bank gave value to Debtors in the form of the credit it advanced to them. Debtors acquired rights in the collateral in that they are the owners of the potato crop. Therefore, a valid security interest was created and has attached to Debtors' 1998 potatoes. Idaho Code s 28-9-203(2) (security interest attaches when it becomes enforceable against the debtor with respect to the collateral.) Moreover, this security interest attached to

² The Court presumes the legal description included in the security agreement accurately describes the land on which the potato crop was grown in 1998 since Debtors have not shown otherwise.

the cash proceeds of the potato crop when it was sold. Idaho Code §28-9-306.(2)

While Wells Fargo holds a valid security interest in the 1998 potatoes to secure its loans to the Debtors, the critical issue here is whether that security interest was properly perfected. Under the Idaho UCC, crops “used or produced in farming operations” are included in a category of collateral referred to in the statutes as “farm products.” Idaho Code § 28-9-109(3). Perfection of a security interest in farm products³ requires the filing of a financing statement with the Idaho Secretary of State. Idaho Code § 28-9-302(1). A legally sufficient financing statement for farm products must include a: (1) debtor’s name and address; (2) debtor’s signature; (3) secured party’s name and address; (4) debtor’s social security number or tax identification number; (5) description of the crops by category; and (6) a reasonable description of the real property where the crops are grown or located. Idaho Code § 28-9-402(9). “A financing statement substantially complying with the requirements of [Section 28-9-402(9)] is effective even though it contains minor errors which are not seriously misleading.” Idaho Code § 28-9-402(8). This section was intended to eliminate “fanatical and impossibly refined reading” of the statutory requirements for an effective financing statement allowing some exception for minor errors. Official

Comment to Idaho Code § 28-9-402(8). Once properly filed, the financing statement is effective for five years, unless it is continued or terminated. Idaho Code §28-9-403(2). A security interest is perfected in the proceeds of collateral if the interest in the original collateral was properly perfected. Idaho Code § 28-9-306(3).

In 1986, the Idaho Legislature amended Article 9 of the UCC to establish a central filing system to give notice of security interests in farm products. See Idaho Code § 2-9-407. The creation of this special index was mandated by Congress in the Food Security Act (“FSA”) of 1985. See 1986 Idaho Sess. Laws 338; 7 U.S.C. § 1631, *et seq.* Congress intended the use of a single, central filing system in each state as a method of eliminating confusion and other problems in the sale of farm products attributable to variations in the many different local filing systems previously employed across the country.⁴

The amendments to the Idaho Code directed the Secretary of State to “develop and implement a central filing system containing the information filed with [its] office pursuant to section 28-9-402(9).” Idaho Code § 28-9-407(3).

The new central filing system was to apply to all financing statements for farm

⁴ In Idaho, for example, prior to creation of the new filing index, security interests in crops were perfected by filing a UCC-1 with the office of the county recorder in the county in which the crops were raised. *Wood v. The Pillsbury Company (In re Wood)*, 83 I.B.C.R. 151, 155.

products filed under Section 28-9-402(9), and was designed to constitute “a separate system for filing of financing statements and search, retrieval and dissemination of information relating to financing statements for farm products . . .” *Id.* Moreover, those requiring information about security interests in farm products were expected to conduct a “separate search” in the new index. *Id.* To accommodate those searches, the Secretary of State was instructed to “designate the categories of farm products” to be used in the index. *Id.* Acknowledging the time-sensitive nature of farm financing, the statute requires the Secretary of State, upon request, to provide oral confirmation of the existence of a financing statement filed under Section 28-9-402(9), followed by written confirmation.

As instructed, the Idaho Secretary of State thereafter promulgated rules establishing and implementing the new, separate central filing system contemplated by the statutes, which system became effective July 1, 1993. IDAPA 34.05.01, *et seq.* The administrative rules require that an “effective financing statement,” or “EFS,” be filed on a form designated as a “UCC-1F.” IDAPA 34.05.01.011.01. An EFS must contain: (1) the complete and precise name(s) of the debtor(s); (2) the debtor’s social security number or tax identification number; (3) the debtor’s address; (4) name of the secured party;

(5) codes for the county, farm product, and crop year; and (6) signatures of all debtors whose names are included in the debtor's block of the UCC-1F. IDAPA 34.05.01.011.02, .03, .04, .05, .07, .08, .09, and .12. These are essentially the same requirements as specified in Section 28-9-402(9), except that the administrative rules do not require a description of the real property on which the farm products are produced, instead requiring only a county code. Again, the rules acknowledge that a properly filed UCC-1F is effective for five years. Idaho Code §28-9-403(2).

In this case, Wells Fargo has only one UCC-1F of record, filed on June 26, 1996. This financing statement designates the farm product that is security for the bank's loan as Debtors' "wheat" crop, and it covers all crop years. Potatoes are not designated. Bingham County is designated. At no time did Wells Fargo amend the UCC-1F to add additional crops, as allowed by the rules, IDAPA 34.05.01.012 (amendment to be filed on form UCC-3F).

The Court concludes that, under these facts, Wells Fargo's UCC-1F is contains a major error and is defective. It fails to designate "potatoes" as a covered crop. Under the standard established by the case law, the Court also concludes that this defects would be seriously misleading to subsequent

creditors inquiring about the existence and extent of Wells Fargo's security interest, particularly with regard to Debtors' potato crop.

Wells Fargo argues that under the statutes and rules, it was not necessary to file a UCC-1F to perfect its security interest in Debtors' 1998 potatoes. It insists that, viewed collectively, its UCC financing statements covering all of Debtors' crops, which would include potatoes, are sufficient to perfect its security interest in the potato sale proceeds. Wells Fargo explains that its UCC-1 filings describing "crops" should be sufficient to provide a potential creditor with notice that a debtor's potatoes may be subject to its secured interest. Once the potential creditor has notice, Wells Fargo suggests the creditor is obligated to inquire with the bank to determine which crops are covered.

To the Court, Wells Fargo's argument is a conspicuous attempt to evade the responsibility placed by the Legislature upon a secured creditor to provide notice of the extent of its interests in a debtor's farm products to potentially competing creditors. The bank's approach, in the Court's opinion, is directly at odds with the new, comprehensive scheme established in the Idaho Code and administrative rules, as mandated by Congress. The policy promoted by the Food Security Act, the Idaho UCC, and the Secretary of State's rules, of

providing the public with a single, separate, central index of all security interests claimed by creditors on any farm products in Idaho, is surely jeopardized when a creditor can require third parties to search outside of that index to discover pertinent information about the existence and extent of a lien. Instead, when the statutes and rules are read together, it seems clear that the filing of an adequate UCC-1F is necessary to perfect a secured interest in farm products in Idaho. Wells Fargo has failed to fulfill its responsibilities in this respect.

The Court need not speculate as to the potential prejudice occasioned by accepting the bank's interpretation of the law. At the evidentiary hearing on Wells Fargo's motion, the Court heard the testimony of Brian Davis, a local financial services manager for Simplot Soilbuilders, a major supplier of fertilizer and chemicals on credit to farmers in Idaho. Mr. Davis told the Court how he had negotiated the sale of fertilizer to Debtors for their 1998 potato crop. As a condition to extending credit to Debtors for their purchases, Simplot required that it receive a first priority security interest in Debtors' potato crop. As part of this transaction, and as is its practice and policy in general, Simplot employees contacted the Idaho Secretary of State to request information concerning the existence of any other liens on Debtors' potato crop. The Secretary of State, as Simplot requested, searched the UCC-1F filings, and

confirmed to Simplot that there were no existing financing statements covering Debtors' potatoes. Based upon this understanding, Simplot financed Debtors' purchase of over \$100,000 in fertilizer. Mr. Davis testified that Simplot did not have the Secretary of State search for UCC-1s because it was the understanding of those within his company that a UCC-1 would not be used to give notice of a security interest in crops, only other kinds of collateral.

While of course the "understanding" of Simplot's employees concerning the operation of the Idaho laws is not conclusive, this testimony is instructive concerning the farm credit and commercial practices now at work in this State. The approach of Simplot's employees is consistent with what this Court, in its experience in agricultural credit, would view as the almost universally held belief about how the State's system of indexing financing statements operates. Adoption of Wells Fargo's argument excusing the requirement to file a UCC-1F would frustrate those practices, something the UCC is designed to avoid. In this case, Wells Fargo's failure to file a UCC-1F which included potatoes to perfect its interest in the 1998 potato crop left other creditors, like Simplot, without effective notice that Debtors' potato crop may be subject to a competing secured interest. The Court concludes that the filing of a UCC-1F including "potatoes" as a crop subject to Wells Fargo's security interest

was necessary to perfect that interest. Wells Fargo's security interest in therefore likely avoidable by a debtor-in-possession exercising the avoidance powers granted by 11 U.S.C. § 544(a).⁵

Even assuming Wells Fargo was not required under Idaho law to file a UCC-1F to perfect its security interest in Debtors' potato crop, Debtors assert Wells Fargo is unperfected for another reason. They contend that the bank's UCC-1's each significant errors and were defective, and whether viewed individually or collectively, those UCC-1s were seriously misleading. The Court agrees with Debtors.

The UCC-1s filed on June 26, 1996 and November 7, 1997 covering Debtors' "crops" contain no description of the real estate upon which the crops are growing or to be grown as required by Section 28-9-402(9)(f).⁶ Under the regulations, this requirement may be satisfied by simply listing the appropriate county, and a legal description is not required. Even if a financing

⁵ In order to formally avoid a security interest, Debtors must commence an appropriate adversary proceeding against Wells Fargo requesting such relief. See F.R.B.P. 7001(2). Consequently, this decision does not purport to grant avoidance of Wells Fargo's security interest.

⁶ Recall, the April 17, 1997 financing statement included an attachment with the legal description of several parcels of land. The Court presumes, since Debtors have not shown otherwise, that the 1998 potatoes were grown on one or more of these parcels, and that the legal descriptions are sufficient to identify these particular parcels.

statement omitting the legal description of the property otherwise substantially complies with the other requirements of Idaho Code § 28-9-402(9), this Court finds that omission of the land description is not a minor error and would be seriously misleading. Idaho Code § 28-9-402(8).

The Court is mindful that the “substantial compliance” rule of Section 28-9-402(8) “is designed to discourage the fanatical and impossibly refined reading of such statutory requirements in which courts have occasionally indulged” Idaho Code § 28-9-402(8), Official Comment 9. Substantial compliance with the requirements for contents of a financing statement is achieved if deviations from the strict requirements of the statute do not seriously mislead any creditor. *In re Suddarth*, 222 B.R. 352, 356 (Bankr. N.D. Okla. 1998)). “The issue is whether or not a reasonably diligent searcher would be misled by the irregularity.” *FDIC v. Victory Lanes*, 158 B.R. 617, 621 (E.D. Vir. 1993).

Debtors frequently grant, and creditors frequently claim, liens or security interests in only some of the crops grown by a debtor. The notion that a debtor grants a creditor a security interest in all its crops grown on a particular parcel does not mean that the others must presume the creditor holds an interest in all of that debtor’s crops wherever located. This is the thinking of the

Legislature, in the Court's view, for the requirement in Idaho Code § 28-9-402(9)(f) requiring a reasonable description of the land on which the subject crops are produced.⁷ Under the facts before the Court, the Court finds that a reasonably diligent searcher could have been misled by the omission of a legal description from Wells Fargo's UCC-1s.⁸

Debtors assert that these two UCC-1's filed by Wells Fargo in 1997 covering their crops are also defective because they were not signed by Debtors, but rather by an agent of Wells Fargo. Mr. Duffin testified at the hearing that he had not read and was unaware of the existence of the "attorney-in-fact" clause in the bank's security agreement. However, both Debtors signed the March, 1997, security agreement which contained, just above the signature line, a provision stating that

⁷ Under earlier versions of the law, this Court has held that the failure to include a proper description of the real property upon which crops were grown is a sufficiently serious and misleading error to justify avoidance of a security interest. *Wood v. The Pillsbury Company (In re Wood)*, 83 I.B.C.R. 151, 155. At the time, financing statements for crops were filed in the county where crops were grown, and the financing statement had been actually filed in the correct county, although no description was included. 83 I.B.C.R. at 155.

⁸ The fact that the Court heard no evidence that any potential creditor was actually deceived by the defective financing statements in this case is irrelevant. General UCC principles require courts to measure the accuracy of financing statements from the standpoint of the hypothetical creditor. *Truste Corp. of Montana v. Patterson (In re Copper King Inn, Inc.)*, 918 F.2d 1404, 1408 (9th Cir. 1990).

“EACH GRANTOR ACKNOWLEDGES HAVING
READ ALL THE PROVISIONS OF THIS
AGRICULTURAL SECURITY AGREEMENT, AND
EACH GRANTOR AGREES TO ITS TERMS.”

Exhibit C: Agricultural Security Agreement at p.5.

Was Duffin’s signature required for the UCC-1s to be effective?

Resolution of this issues requires a careful balancing of the interests of both debtors and creditors. Here the Court is not persuaded by Debtors’ argument that the “attorney-in-fact” clause of the security agreement should not be enforced because Debtors did not realize the effect of the contract they were executing. Courts should be reluctant to permit a party to avoid contractual obligations absent a showing that the contract produces an unconscionable result, is unlawful, or is contrary to public policy. *Smith v. Idaho State University Federal Credit Union*, 760 P.2d 19, 23 (Idaho 1988). Here, the security agreement does not produce an unconscionable result, nor was it purpose unlawful in any respect. However, the Court must determine if the “attorney-in-fact” provision in the security agreement is contrary to public policy.

Whether contractual language is contrary to public policy is a determination made after examining the facts and circumstances of each case. *Quiring v. Quiring*, 944 P.2d 695, 701 (Idaho 1997). The Idaho Supreme Court

continues to embrace the test outlined in *Stearns v. Williams*, 240 P.2d 833 (Idaho 1952). The *Stearns* court determined that :

The usual test applied by courts in determining whether a contract offends public policy and is antagonistic to the public interest is whether the contract has a tendency toward such an evil, *Wood v. Casserleigh*, 30 Colo. 287, 71 P. 360; if it is opposed to the interest of the public, or has a tendency to offend public policy, it will be declared invalid, even though the parties acted in good faith and no injury to the public would result in the particular instance; the test to be applied is not what is actually done but that which may or might be done under the terms of the contract; it is the evil tendency of the contract and not its actual injury to the public that is determinative

Stearns, 240 P.2d at 837. Under these particular facts, the Court concludes there was an important public interest served by requiring Debtor to personally sign the financing statements.

Idaho Codes § 28-9-402(9) expressly requires a debtor to sign the financing statement. The Idaho Supreme Court has articulated two central purposes behind this requirement. *J.K. Merrill & Son, Inc. v. Carter*, 702 P.2d 787, 792 (Idaho 1985). First, a debtor's signature on a financing statement provides notice to potential creditors that the debtor has provided certain collateral as security in another transaction. *Id.* Second, "[t]he debtor's signature on the filing statement is an acknowledgment, or authentication, of the

financing statement -- it is a public statement that the debtor's property, the collateral, is encumbered." *Id.* The debtor's signature on this document filed for public record preserves the integrity of the filing system.

A financing statement without the debtor's signature may be misleading because it may cause doubt whether the collateral listed on the financing statement is truly security for an obligation. There is some risk that a secured creditor could manipulate the financing statement to include collateral which the debtor did not intend as security. Without the debtor's signature, the public, including other potential creditors, may be uncertain whether a debtor has verified the description or items of collateral, and whether creditors may be drawn into litigation over the existence or priority of a lien. If the reliability of a filed financing statement is subject to question, the reliability and efficiency of the notice system is impaired.

Wells Fargo suggests that a potential creditor would have been charged with inquiry notice concerning its security interests in this case by discovery of its filed UCC-1s signed or not. If concerned, the creditor could verify the accuracy of the contents of the financing statement with the debtor if necessary. However, this approach shifts the responsibilities of providing effective, authentic notice away from the lien creditor and onto others. The UCC

is clear in that it is the responsibility of the secured creditor to have a properly executed, accurate financing statement of record. To this Court, this responsibility would include obtaining the signature of the debtor.

Wells Fargo reads *J.K. Merrill & Son, Inc. v. Carter*, 702 P.2d 787 (Idaho 1985), broadly to hold that a financing statement need not actually be signed by a debtor. However, in *Merrill*, the critical issue before the Court was whether a copy of the parties' security agreement, which had been signed by the debtor and attached to an unsigned financing statement, satisfied the signature requirement. The Idaho Supreme Court acknowledged that a security agreement, if it contains the requisite information for a financing statement, could substitute for a financing statement when filed for record.⁹ As a result, because the security agreement was signed by the debtor, the information placed in the public record had been verified by the debtor, and the court held that the statutory requirement was met. By this Court's reading, however, this decision does not stand for the proposition asserted by Wells Fargo: that a

⁹ Section 28-9-402(1) provides that "[a] copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor." This same statute also authorizes the creditor to file a "carbon, photographic or other reproduction of a security agreement or a financing statement" in lieu of an original, signed UCC-1 "if the security agreement provides or if the original has been filed in this state." The statute does not expressly authorize the creditor to sign a UCC-1 on behalf of the debtor.

debtor's signature on a financing statement can simply be omitted when the debtor has authorized the creditor to sign the UCC-1 on its behalf.

Here, while Debtors admittedly signed the bank's security agreement, unlike in *J.K. Merrill & Son, Inc.*, Wells Fargo did not attach a copy of the security agreement to its financing statements. Allowing a secured creditor to "contract away" the requirement in the statute and administrative rule that a debtor sign a financing statement would effectively eliminate the debtor's opportunity to review the contents of the financing statement for accuracy and to authenticate the information thereby by a signature. This approach is contrary to the public interest. Therefore, the debtor must sign the financing statement. Alternatively, if the creditor desires to avoid the signature requirement, it can substitute or attach a copy of the security agreement to its filing. For these reasons, the Court finds that the contractual provision in the security agreement authorizing Wells Fargo to act as Debtors' attorney-in-fact, as it relates to preparing and signing financing statements, violates public policy and therefore should not be enforced. Wells Fargo's unsigned financing statements therefore are substantially defective in this regard, and are seriously misleading and do not give effective notice of its security interest in Debtors' crops.¹⁰

¹⁰ The Court is cognizant of its decision in *Sweney v. Cardinal Doors, Inc. (In re Door Supply Center, Inc.)*, 80 I.B.C.R. 5, 7, wherein the Court,

Debtors also assert that the UCC-1s financing statements are defective because those filings do not contain Debtors' social security or tax identification numbers, and in the case of the UCC-1F, the listed number was incorrect.

For financing statements in general, under Idaho Code § 28-9-402(1), the debtor's social security number or tax identification number is not required. However, subsection (1) governs "except as provided in subsection (9) of this section" As noted above, subsection (9) does in fact mandate that a financing statement covering farm products contain this special information. Idaho Code § 28-9-402(9)(d).

Wells Fargo has offered no justification for allowing the complete omission of correct social security numbers from the UCC-1 forms it filed. Where the Legislature has adopted a special requirement for including this information, the Court should be reluctant to excuse compliance. However, in this case, Wells Fargo contends that because the UCC-1F it filed has a social

arguably in *dicta*, refuses to avoid a security interest because the creditor filed a financing statement that lacked a signature by the debtor. Suffice it to say that where, as here, the failure to obtain debtor's signature on the financing statement was not an isolated product of a creditor's inadvertence, but rather evidenced by a pattern of intentional disregard for the requirements for the statutes, among other factors, a different result is justified.

security number listed for Eric Duffin, albeit a mistaken one, that when its filings are viewed collectively, this mistake is not seriously misleading.

In this particular case, when the contents of the bank's various financing statements are considered together, the Court agrees with its position. The error in Debtor's social security number on the recorded UCC-1F involves one incorrect digit. Such an error should not prevent the effective identification of the debtor listed in the financing statements by others. If another creditor searched the database using Debtor's name, any error noted in his listed social security number would likely be recognized as such. At that point, if the creditor were concerned, it could reasonably be expected to inquire with respect to the error. Were that the only defect in the bank's financing statements, a different result may obtain. However, given the magnitude of the problems discussed above, it is of no consequence that this particular error is not a major one.

Conclusion.

For the reasons stated above, the Court concludes that Wells Fargo's security interest in Debtors' 1998 potato crop sale proceeds is likely avoidable. Because of this, Wells Fargo has not shown it lacks adequate

protection or good cause for stay relief purposes as to those crop proceeds, and its motion for relief from stay should be denied in this regard.

Debtors suggest they can offer Wells Fargo adequate protection of its interest in their equipment through periodic cash payments. Whether they can was an issue not submitted to the Court at the last hearing. The parties may agree to adequate protection. If they do not, Wells Fargo may notice its motion for further hearing.

Absent submission of either a stipulated order for adequate protection or notice of further hearing within the next fourteen (14) days, the Court will enter its order denying Wells Fargo's motion in all respects.

DATED This _____ day of June, 1999.

JIM D. PAPPAS
CHIEF U.S. BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

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CASE NO.: 99-40111

CAMERON S. BURKE, CLERK
U.S. BANKRUPTCY COURT

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